

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BOBBY L. PERRYMAN
Claimant

VS.

CONSOLIDATED FREIGHTWAYS, INC.
Respondent
Self-Insured

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Docket No. 117,925

ORDER

The applications of claimant and respondent for review by the Workers Compensation Appeals Board of an Award of Review and Modification entered by Administrative Law Judge Shannon S. Krysl on July 18, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Gary R. Terrill of Overland Park, Kansas. Respondent, a qualified self-insured, appeared by and through its attorney, Frederick J. Greenbaum of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether the Administrative Law Judge erred in failing to provide credit to respondent for payments of temporary total disability compensation paid in Nebraska.
- (2) Whether the Administrative Law Judge erred in granting attorney fees to claimant's attorney under K.S.A. 44-536.
- (3) Claimant originally appealed the nature and extent of claimant's injury and/or disability from the Award of Review and Modification but, at oral argument before the Appeals Board, claimant advised the Appeals Board this issue was being withdrawn. There was no objection by the respondent and, as such, the finding regarding the

nature and extent of injury and disability from the Award of Review and Modification is herein affirmed by the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant suffered injury on July 11, 1986 to his low back while working for respondent in Kansas. Claimant entered into a running award on September 17, 1987 for a 21 percent functional whole body impairment. On October 20, 1988, claimant suffered injury in Nebraska to his neck, upper back and arms with temporary aggravation to his low back. The respondent paid claimant temporary total disability compensation in Nebraska for 176.71 weeks for the periods May 10, 1989 through August 24, 1989 and October 22, 1990 through November 24, 1993. These payments totaled \$43,295 and were paid at \$245 per week, the Nebraska rate applicable at the time of claimant's injury. Respondent presented evidence through Dr. Edward J. Prostic that claimant was not temporarily totally disabled during this period of time as a result of the neck and upper back injuries suffered in Nebraska. Dr. Prostic testified claimant was temporarily disabled during these periods as a result of a low back injury only. Dr. Prostic went on to say the Nebraska incident did not permanently aggravate claimant's low back but that his ongoing symptomatology resulted from the gradual deterioration of claimant's low back stemming from the 1986 Kansas injury.

Respondent's witness, Evelyn K. Radmacher, testified that the temporary total disability paid to claimant in 1989 and 1990 through 1993 was paid through the Nebraska claim and not as part of the Kansas action. Respondent requests credit for these payments claiming, as the temporary total appeared to have been paid for the low back injury which was the Kansas injury, this temporary total disability compensation should be applied to the Kansas claim.

The Appeals Board disagrees. Had temporary total disability compensation been paid as a part of the Kansas litigation, respondent would be correct that an appropriate credit would be due in this matter. Under the facts of this case the Appeals Board finds it has no authority to render orders regarding litigation ongoing in another state. The Appeals Board is not in a position to grant credit to the respondent for temporary total disability compensation payments made during the litigation of a separate claim in a separate state for a separate injury. The Appeals Board has no jurisdiction over the subject matter of that claim. Therefore, respondent's request for credit for the temporary total disability compensation payments made through the Nebraska litigation should be, and is herein, denied. The Award of Review and Modification denying respondent credit for the Nebraska temporary total disability compensation payments is affirmed.

Claimant next objects to the award by the Administrative Law Judge of attorney fees to claimant's attorney. The issues decided by the Administrative Law Judge do not include whether claimant is entitled to attorney fees under K.S.A. 44-536. The only mention of attorney fees made in the Award of Review and Modification is as follows:

"The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536."

K.S.A. 44-536(g) states in part:

"If the services rendered under this subsection by an attorney result in an additional award of compensation, the attorney's fees shall be paid from such amounts of compensation."

In this instance, claimant's award was increased from 21 percent to 40 percent permanent partial general body disability. Claimant's attorney is statutorily entitled to a percentage of the additional award under K.S.A. 44-536. Insofar as the Award of Review and Modification by the Administrative Law Judge grants claimant attorney fees subject to the provisions of K.S.A. 44-536, the Appeals Board finds said Award to be appropriate. As such, claimant's attorney is awarded attorney fees subject to the provisions of K.S.A. 44-536 and respondent's objection is overruled.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Review and Modification by Administrative Law Judge Shannon S. Krysl dated July 18, 1994, should be, and is hereby, affirmed in all respects and claimant is granted an Award of Review and Modification against the respondent, a qualified self-insured, for an accidental injury arising on July 11, 1986 for a 40% permanent partial general body disability.

At the time of the Award claimant was entitled to 65 additional weeks at the statutory rate of \$256.00 per week totalling \$16,640.00.

As of April 5, 1996, the entire 65 weeks is past due and owing and ordered paid in one lump sum minus amounts previously paid.

Future benefits are also awarded upon proper application to and approval by the Director.

As above stated, claimant's contract for attorney fees is approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid directly as follows:

Gene Dolginoff Associates, Ltd.	
Deposition of Bobby L. Perryman	\$322.50
Deposition of Edward J. Prostic, M.D.	\$345.75
Krebs Court Reporting	
Deposition of Evelyn K. Radmacher	Unknown

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Gary R. Terrill, Overland Park, KS
Frederick J. Greenbaum, Kansas City, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director